

April 11, 2014

Ex Parte

Marlene H. Dortch Secretary Federal Communications Commission 445 12th Street, SW Washington, DC 20554 1300 I Street, NW, Suite 400 West Washington, DC 20005 Phone 202 515-2470 christopher.oatway@verizon.com

Re: Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Docket No. 12-268

Policies Regarding Mobile Spectrum Holdings, Docket No. 12-269

Dear Ms. Dortch:

T-Mobile recently filed a paper by Peter Cramton asserting that Canada's recent 700 MHz auction supports T-Mobile's request for a regulatory guarantee that it can acquire several licenses at the Incentive Auction without any need to bid against Verizon or AT&T. T-Mobile is an established nationwide incumbent with a large, multinational parent and a demonstrated ability to acquire the spectrum it needs. For example, T-Mobile recently entered into an agreement with Verizon to acquire what it describes as a "huge swath" of low-frequency spectrum covering 70% of its customers. And the last time T-Mobile chose to participate in an auction, it dominated the bidding – spending \$4.2 billion and acquiring more spectrum than Verizon and AT&T combined. Dr. Cramton fails to support his assertion that T-Mobile needs special preferences. His discussion of Canada's auction does not cure that failure.

Dr. Cramton Does Not Engage the Extensive Evidence Showing His Client's "Foreclosure" Theory Is Meritless

Dr. Cramton asserts that T-Mobile's auction restriction proposal is needed to "promote improved competition" and "prevent the auction from cementing further concentration." But he does not support that assertion. Instead, he joins T-Mobile's other economists in failing to

See Peter Cramton, "Lessons from the Canadian 700 MHz Auction" (April 2014) ("Cramton Paper"), attached to Ex Parte Letter from Trey Hanbury, Hogan Lovells USLP, to Marlene H. Dortsch, Secretary, FCC, Docket Nos. 12-268 & 12-269 (Apr. 3, 2014).

Remarks of Neville Ray, T-Mobile CTO, T-Mobile US Inc. at Morgan Stanley Technology, Media & Telecom Conference (Mar. 5, 2014), at 3.

See Auction No. 66 Summary (http://wireless.fcc.gov/auctions/66/charts/66press_3.pdf). Cramton Paper at 10.

engage the extensive economic evidence showing that Verizon and AT&T have neither the incentive nor ability to "foreclose" T-Mobile (or any other competitor). That evidence includes a substantive, data-driven report by Dr. Leslie Marx, an auction expert and former FCC Chief Economist, explaining that proposals to restrict Verizon and AT&T "do not address any real world problem." Dr. Marx concludes that neither T-Mobile nor Sprint has been foreclosed from access to low-frequency spectrum as they consistently failed to purchase it despite numerous opportunities to do so at auction and in the secondary market. Moreover, she provides various reasons why Verizon and AT&T are unlikely to adopt a foreclosure strategy in the Incentive Auction: (1) foreclosure is unlikely to be profitable for Verizon or AT&T because competition substantially reduces any "foreclosure value" those firms might theoretically realize; (2) foreclosure would be virtually impossible in the context of anonymous bidding because AT&T and Verizon would not know when to stop bidding given that they cannot know if they are bidding against one another or bidding against a foreclosure target; (3) imposing build-out requirements (which Verizon supports) would substantially increase the cost of any foreclosure strategy and thereby make foreclosure even less viable; (4) incentives for Verizon and AT&T to free ride on one another's foreclosure efforts further reduces any risk of foreclosure; and (5) uncertainty about the level and elasticity of supply in the Incentive Auction makes a foreclosure strategy even more difficult to implement.⁷

Dr. Marx is joined by numerous other prominent economists, including Dr. Michael Katz, former Chief Economist of the FCC and of the Department of Justice's Antitrust Division, reaching the conclusion that Sprint and T-Mobile do not need special treatment in order to acquire spectrum they need to compete.

Dr. Cramton's Analogy Between T-Mobile's Proposal and Canada's Auction Restriction Is Misleading

Rather than attempt to provide economic support for his client's proposal in *this* country for *this* auction, Dr. Cramton asserts that Canada shows that "spectrum-aggregation limits can succeed in encouraging valuable competition in the mobile industry." First, it is misleading to say that Canada's auction rule is a "spectrum aggregation limit" similar to what T-Mobile proposes here. The Canadian regulator employed an auction-specific limit on the number of

The only T-Mobile economist who has made any attempt to support T-Mobile's foreclosure theory is Jonathan Baker. Dr. Baker does not present any empirical analyses. Instead, he bases his theory on hypothetical examples of what might happen in hypothetic markets. See, e.g., Jonathan B. Baker, "Further Comments on Spectrum Auction Rules That Foster Mobile Wireless Competition, filed by T-Mobile in WT Docket No. 12-269 (Aug. 2, 2013), at 4 (using a "stylized numerical example" to explain how a hypothetical firm might chose not to compete head-to-head with a hypothetical monopolist if the price of low-frequency spectrum is too high).

See, e.g., Leslie M. Marx, Economic Analysis of Proposals that Would Restrict Participation in the Incentive Auction, Sept. 18, 2013, at 1 ("Marx Paper").

See Marx Paper, §§ IV.A, IV.B, IV.C, & IV.D.

⁸ Cramton Paper at 2.

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licenses any nationwide incumbent could acquire during the auction. ⁹ It did not impose restrictions that limited participation by some but not all existing nationwide providers. By contrast, what Dr. Cramton supports in the United States is a spectrum aggregation limit on overall low-frequency spectrum holdings – a limit that would penalize only Verizon and AT&T because they are the only nationwide wireless providers that have availed themselves of opportunities (including at the 700 MHz auction) to acquire such spectrum. It is incorrect to suggest that T-Mobile's proposed spectrum aggregation limitation is the same as the caps employed in Canada. ¹⁰

Notably, Dr. Cramton does not dispute that Industry Canada imposed exactly the same nondiscriminatory cap on all of the nationwide incumbents: *Every* firm with at least a 10% national market share was required to compete on equal footing with the other nationwide incumbents. T-Mobile and Sprint, of course, both have more than 10% of the U.S. market – so if T-Mobile views the Canadian rules as instructive, it should support imposing the *same* restrictions on itself (and on Sprint) that it wants imposed on Verizon and AT&T. Dr. Marx made a similar point. In response to T-Mobile's assertion that restricting large bidders may lead to more robust bidding by ensuring that small firms are not deterred from participating, Dr. Marx observed that T-Mobile's and Sprint's economists do not appear to assert that their clients are "small" firms that would be deterred by the presence of Verizon and AT&T. So if T-Mobile and Sprint have a *bona fide* interest in promoting the participation of *small firms*, they (under their *own* theory) should support imposing the same restrictions on themselves that they seek to impose on VZ and AT&T.

Finally, Dr. Cramton asserts that the auction restriction employed in the UK's 4G auction supports T-Mobile's proposal here. ¹³ But Ofcom *rejected* Dr. Cramton's assertion that a firm needs to be guaranteed low-frequency spectrum in order to be a viable competitor. ¹⁴ Ofcom

See Industry Canada, "700 MHz Auction FAQs" ("Canada FAQs"), available at http://www.ic.gc.ca/eic/site/icgc.nsf/eng/07398.html.

T-Mobile also filed a paper asserting that the restriction it advocates here is analogous to policies employed by European regulators. See Vitali Gretschko, Stephan Knapek, & Achim Wambach, "Spectrum Aggregation Limits in Auctions with Spectrum below 1 GHz: the European Experience" (December 2013), attached to Ex Parte Letter from Trey Hanbury, Hogan Lovells USLP, to Marlene H. Dortsch, Secretary, FCC, Docket Nos. 12-268 & 12-269 (Dec. 12, 2013). That paper calculates, through an undisclosed methodology, what it calls the "specific aggregation limit for spectrum below 1 GHz" for fourteen European countries. Id., Table 1. But all but one of those countries employed an auction-specific limit. Only one (Spain) employed a spectrum aggregation limit based on firms' respective spectrum holdings – and Spain's restriction resulted in spectrum being unassigned at auction. The paper does not identify any foreign regulatory decision guaranteeing large amounts of cheap spectrum to two favored nationwide competitors by limiting the ability of their rivals to acquire the spectrum they need to serve their customers.

See Canada FAQs.

Marx Paper, ¶ 85.

Cramton Paper at 9.

Ofcom Statement, Annex 3, Assessment of future mobile competition and award of 800 MHz and 2.6 GHz (July 24, 2012), ¶ A3.133, available at

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specifically concluded that "[w]e do not consider it appropriate and proportionate" to establish rules ensuring that all four nationwide competitors have sub-1 GHz spectrum." The reasonableness of that finding is confirmed by the fact that various foreign operators have made conscious business decision to compete only with higher-band spectrum and to forego opportunities to acquire low-band spectrum. 16

In other words, in addition to failing to present evidence that T-Mobile will be unable to acquire low-frequency spectrum without special preferences, Dr. Cramton provides no evidence that competition would be harmed if his client does not receive a special preference. And he certainly does not explain why T-Mobile – having recently entered into an agreement to acquire a "huge swath" of 700 MHz A Block licenses – supposedly needs a regulatory guarantee that it can acquire *substantially more* low-frequency spectrum without needing to bid against Verizon or AT&T.

This letter is being filed pursuant to Section 1.1206 of the Commission's Rules. Should you have any questions, please contact the undersigned.

Sincerely,

Christopher Oatway

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http://stakeholders.ofcom.org.uk/binaries/consultations/award-800mhz/statement/Annexes1-6.pdf. ("[h]aving considered the evidence and responses, our judgment is that it is unlikely to be necessary to hold sub-1 GHz spectrum to be a credible national wholesaler.").

See Mobile Future, The Case For Inclusive Spectrum Auction Rules: How Failed International Experiments with Auction Bidding Restrictions Reveal the Strength of Inclusive Rules that Put Consumers and Innovation First (Sept. 2013), at 14-16 (filed in Docket Nos. 12-268 & 269 on Sept. 19, 2013).